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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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BLACKWELL SANDERS PEPER MARTIN LLP 720 OLIVE STREET SUITE 2400 ST. LOUIS, MO 63101				
			EXAMINER NOVOSAD, JENNIFER ELEANORE	
			ART UNIT 3634	PAPER NUMBER

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,637

Applicant(s)

BORON, ANDREW J.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-25, 30, and 31 is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-17 and 26-29 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This final Office action is in response to the amendment of March 31, 2004 by which claims 1, 9, 11, 12, 18, 20, 26, and 28-31 were amended.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitations "constructed and assembled for shipping as separate subassemblies and adapted to be placed one upon the other to effect connection therebetween... to the respective subassembly" in the last three lines of claim 1 and "said sub assemblies being constructed and assembled for shipping and adapted to be placed one upon the other to effect connection therebetween... said plurality of subassemblies" in lines 6-8 of claim 12 render the claims indefinite since it is unclear what is meant by "to effect connection". *Thus*, it is unclear whether the claims are positively requiring or functionally reciting that the subassemblies be shipped separately and/or placed on top of one another. *Accordingly*, the metes and bounds of the claims cannot be properly ascertained. It is noted that these recitations are currently considered to be functionally recited and hence have been given no patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Figure 20 of U.S. Patent No. 4,763,796 (Flum '796) in view of Figures 1-19 of Flum '796.

Flum '796 discloses a display rack structure (see Figure 20) comprising a first subassembly (lower portion of Figure 20) having a pair of first front upright support members (158) and being adaptable to rest on the floor (at 176) and a pair of first rear upright support members (158); a second subassembly (top of Figure 2) having a pair of second front upright support members (154 and 156) and a pair of second rear upright support members (154 and 156) the second subassembly being adaptable to be supported by the first subassembly; connectors (generally at 160 and 142) cooperating with the first and second support members for removably attaching the first and second subassemblies together whereby the connectors include a plurality of stakes (160) associated with the second support members and sockets (near 142) associated with the first support members; a plurality of shelf members (146), carried vertically by each of the subassemblies and attached to the front support members of each subassembly, and inclined downwardly, whereby each shelf comprises a generally upwardly facing product support (at 168); the display rack structure also having front and rear *portions*, i.e., the sides of the display rack structure are considered to define portions; and the first subassembly, i.e., the base subassembly, comprising at least one brace member (at 148) secured to a rear portion

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thereof. *With respect to the recitation "constructed and assembled for shipping as separate subassemblies... with the shelf members preattached to the respective subassembly"* (in the last three lines of claim 1), it is noted that this recitation is merely functional and since the subassemblies of Flum '796 are not permanently attached to one another they are considered to be "separate" from one another, as required in claim 1 and hence are considered to be capable of being shipped separately.

The claims differ from Figure 20 of Flum '796 in requiring: (a) the shelf members to be attached to *some* of the upright support members (see lines 5 and 15 of claim 1); (b) the support surfaces of the shelf members to extend between the front and rear upright support members (see lines 9-10 and 20-21 of claim 1); and (c) the connectors to define the first support members having stakes and the second support members having sockets (claim 2).

With respect to (a) and (b), Figures 1-19 of Flum '796 show shelf members attached to the front and rear upright members. *Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack structure shown in Figure 20 of Flum '796 with shelf members attached to the support members, as taught by Figures 1-19 of Flum '796, for increased structural support and stability of the shelf members and for increased storage capabilities thereof.

With respect to (c), although Flum '796 discloses the connectors defining sockets in the first members and stakes in the second members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors in such a way as called for in the claims, for ease in economy and manufacture (see MPEP 2144.04(VI)(A)).

Claims 1-3, 11, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No 5,411,153 (Unfried '153) in view of U.S. Patent No. 4,099,472 (Kellogg '472).

Unfried '153 discloses a display rack structure comprising a first subassembly (lower portion of Figure 1) having a pair of first front upright support members (2) and being adaptable to rest on the floor and a pair of first rear upright support members (2); a second subassembly (top of Figure 1) having a pair of second front upright support members (2) and a pair of second rear upright support members (2) the second subassembly being adaptable to be supported by the first subassembly; connectors (23 and 24 - see Figure 4) cooperating with the first and second support members for removably attaching the first and second subassemblies together whereby the connectors include a plurality of stakes (23) associated with the second support members and sockets (24) associated with the first support members; a plurality of shelf members (32), carried vertically by each of the subassemblies and attached to the front and rear support members of each subassembly, and disposed generally horizontally with generally upwardly facing product supports, i.e., the top surface of each shelf members is considered to define this element; the display rack structure also having front and rear *portions*, i.e., the sides of the display rack structure are considered to define portions; and the first subassembly, i.e., the base subassembly, comprising at least one brace member (25 and/or 22) secured to a rear portion thereof. With respect to claim 12, each of the upright support members (2) of each subassembly having opposed end portions whereby one end portion has a stake member (23) and the opposite end portion has a socket (24). *With respect to the recitation "constructed and assembled for shipping..."* (in the last three lines of claim 1 and lines 6-8 of claim 12), it is noted that this recitation is merely functional and since the subassemblies of Unfried '153 are not permanently

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attached to one another they are considered to be "separate" from one another, as required in claim 1 and hence are considered to be capable of being shipped separately.

The claims differ from Unfried '153 in requiring: (a) the shelf members to be attached to *some* of the upright support members (see lines 5 and 15 of claim 1); (b) the support surfaces of the shelf members to extend between the front and rear upright support members (see lines 9-10 and 20-21 of claim 1 and the last two lines of claim 12); and (c) the connectors to define the first support members having stakes and the second support members having sockets (claim 2).

With respect to (a) and (b), Kellogg '472 show front and rear upright support members (30) and shelf members (20a-20c) attached to the front and rear upright members. *Thus*, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack structure of Unfried '153 with shelf members attached to the support members, as taught by Kellogg '472, for increased structural support and stability of the shelf members and for increased storage capabilities thereof.

With respect to (c), although Unfried '153 discloses the connectors defining sockets in the first members and stakes in the second members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have fabricated the connectors in such a way as called for in the claims, for ease in economy and manufacture (see MPEP 2144.04(VI)(A)).

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Figure 20 in view of Figures 1-19 of Flum '796 as applied to claims 1-3, and 11 above, and further in view of Battaglia *et al.* '307 (Figure 1).

The claims differ from Flum '796 in requiring a header assembly including a plurality of connector members engageable with at least some of the second support members (claim 4) and including at least one removable display panel (claim 6).

Battaglia *et al.* '307 (Figure 1) teach a rack comprising front (24) and rear (32) support members and a header assembly (110) comprising connector members (unnumbered - rounded corners of 110, below 112) which are cooperatively engageable with the support members whereby information can be stored therein (see column 6, lines 6-9).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly as taught by Battaglia *et al.* '307 (Figure 1), and a panel removably mountable thereto, for ease in use to the consumer since information about the products stored in the rack can be stored thereon.

Claims 4, 6, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried '153 in view of Kellogg '472 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Varfolomeeva '387.

The claims differ from the above references in requiring a header assembly including a plurality of connector members engageable with at least some of the second support members (claim 4) and including at least one removable display panel (claim 6).

Varfolomeeva '387 teaches a rack comprising support members (36, 38, 40) and a header assembly (22 and 20) comprising connector members (22) which are cooperatively engageable with the support members whereby information can be stored therein.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack structure of Unfried '153 with a header assembly

as taught by Varfolomeeva '387, and a panel removably mountable thereto, for ease in use to the consumer since information about the products stored in the rack can be stored thereon.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Figure 20 in view of Figures 1-19 of Flum '796 as applied to claims 1-3, and 11 above, and further in view of Battaglia *et al.* '307 (Figure 1A).

The claim differs from Flum '796 in requiring a header assembly including a plurality of connector members engageable with at least some of the second support members (claim 4) whereby the connector members define sockets for receiving stakes of the support members.

Battaglia *et al.* '307 (Figure 1A) teach a rack comprising front (24) and rear (32) support members and a header assembly (26) which comprising connector members defining stakes (30) disposed in receiving sockets (at 28).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Flum '796 with a header assembly, as taught by Battaglia *et al.* '307, with the header assembly comprising sockets (see MPEP 2144.04(VI)(A)), for ease in assembly.

Claims 8, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Figure 20 in view of Figures 1-19 of Flum '796 as applied to claims 1-3, and 11 above, and further in view of Lee '170.

The claims differ from Flum '796 in requiring the shelf members to include product channels (claim 7) forming a retention opening at the front thereof which has a dimension less than the width of the product channel, a first member including a product support surface and a second member defining spaced wire members forming guide rails that is removably attached to

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the first member (claim 8), and latch devices connecting the organizer member to the rack member (claim 26) whereby the latch device is defined by a rail secured to the organizer member (claim 27).

Lee '170 teaches a display rack comprising shelf members which include a first member (at 120) including a product support surface and a second member (at 30) defining spaced wire members forming guide rails that is removably attached to the first member whereby product receiving channels are formed (between adjacent elements 32) and each channel having a retention opening (horizontally extending between elements 34 and 36) whereby each opening (between 34 and 36) is dimensioned less than the width (see Figure 1 which clearly shows the vertical distance between elements 34 and 36 being less than the horizontal distance between adjacent elements 32) of the channel (between elements 32); the rack member (110 - see Figure 6) is attached to the organizer member (30) by cooperative latch devices (36 and 115) defined by a transversely extending rail member (36) disposed on the organizer member. It is noted that the claims do not require that the opening define a width within the channel that is less than the width of the channel itself nor do the claims require a function associated with the opening.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Flum '796 with first and second members forming product channels and openings, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

Claims 8, 13, and 26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried '153 in view of Kellogg '472 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Lee '170.

The claims differ from the above references in requiring the shelf members to include product channels (claims 7 and 13) forming a retention (gate) opening at the front thereof which has a dimension less than the width of the product channel, a first member including a product support surface and a second member defining spaced wire members forming guide rails that is removably attached to the first member (claim 8), and latch devices connecting the organizer member to the rack member (claims 26 and 28) whereby the latch device is defined by a rail secured to the organizer member (claims 27 and 29).

Lee '170 teaches the display rack as advanced above. *With respect to claim 13*, it is noted that Lee '170 is considered to meet the limitations of the claim as best understood in view of the rejections under Section 112, as advanced above.

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the shelf members in the display rack of Unfried '153 with first and second members forming product channels and openings, as taught by Lee '170, for increased organizational capabilities while increasing support of items placed therein.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Figure 20 in view of Figures 1-19 of Flum '796 as applied to claims 1-3, and 11 above, and further in view of Bustos '191.

Flum '796 discloses the display rack structure as advanced above.

The claims differ from Flum '796 in requiring a plurality of side shelf members removably attachable in a cantilever manner to some of the support members of each subassembly.

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Bustos '191 teaches a display rack comprising side shelf members (20) that are removably attachable (at 13) to support members (11b) by a bracket (22b) in a cantilevered manner (by element 13).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Flum '796 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

Claims 9, 10, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Unfried '153 in view of Kellogg '472 as applied to claims 1-3, 11, 12, and 16 above, and further in view of Bustos '191.

The claims differ from the above references in requiring a plurality of side shelf members removably attachable in a cantilever manner to some of the support members of each subassembly.

Bustos '191 teaches the display rack as advanced above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the display rack of Unfried '153 with side shelf members, as taught by Bustos '191 for increased organizational and storage capacity and capabilities.

Allowable Subject Matter

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to show or suggest a display rack structure, as called for in claim 1, whereby the product retention openings have a transverse dimension less than the width of a respective product channel, as specifically called for in the claimed combination of claim 7. Note applicant's arguments in the second full paragraph on page 17.

Claims 18-25, 30, and 31 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record fails to show or suggest a display rack structure, as specifically called for in the claimed combination of claim 18. It is noted that although the prior art of record shows each element of the claimed device claimed in claim 18, such as subassemblies (see Flum or Unfried), shelf members attached to front and rear upright supports (see Figures 1-19 of Flum or Kellogg), a header assembly (see Battaglia *et al.*), a removable product organizer (see Lee), and a side member (see Bustos), there is no motivation to combine all of these references to arrive at the instant invention.

Response to Arguments

Applicant's arguments with respect to claims 1-6, 8-11, 26, 27; 12-17, 28, and 29 have been considered but are moot in view of the new ground(s) of rejection. The new grounds of rejection were necessitated by the amendment reciting "support surfaces extending between the front positioned upright support members and the rear positioned upright support members" in lines 9-10 and 21-22 of claim 1 and "extending between the respective front positioned and rear positioned upright support members" in the last two lines of claim 12.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jennifer E. Novosad/jen
June 21, 2004



Carl D. Friedman
Supervisory Patent Examiner
Group 3600